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| ART UNIT | PAPER NUMBER |
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| 3622 | |

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# BEFORE THE BOARD OF PATENT APPEALS
# AND INTERFERENCES

Application Number: 09/477,936
Filing Date: January 05, 2000
Appellant(s): EMERSON ET AL.

MAILED

OCT 27 2004

## GROUP 3600

Ernest D. Buff
For Appellant

## EXAMINER'S ANSWER

This is in response to the appeal brief filed July 13, 2004.

**(1)    *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2)    *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly

affect or be directly affected by or have a bearing on the decision in the pending appeal

is contained in the brief.

**(3)    *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4)    *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection

contained in the brief is correct.

**(5)    *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6)    *Issues***

The appellant's statement of the issues in the brief is correct.

**(7)    *Grouping of Claims***

The appellant's statement in the brief that certain claims do not stand or fall

together is not agreed with because the grouping separates claims containing the same

limitations.  For example, Claim 7 is a system claim which performs the same steps as

method Claim 1, and the two claims were finally rejected together.  Likewise, method

Claim 4 performs the same steps as system Claims 8 and 9.  The Appellant has

recognized these similarities in the Brief by arguing Claims 1 and 7 together (pages 6-

23), Claim 2 separately (pages 23-24), Claim 3 separately (pages 24-26), and Claims 4,

8, and 9 together (pages 26-29). Therefore, the Examiner recommends that the claim

grouping of the final rejection be maintained as follows:

      Group I:     Claims 1 and 7

      Group II:    Claim 2

      Group III:   Claim 3

      Group IV:   Claims 4, 8, and 9

### *(8) Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

### *(9) Prior Art of Record*

| | | |
|---|---|---|
| 5,917,830 | CHEN et al | 6-1999 |
| 6.094,677 | CAPEK et al | 7-2000 |
| 5,155,591 | WACHOB | 10-1992 |

### *(10) Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Chen et al (5,917,830) in view of Capek et al (6,094,677) and Wachob (5,155,591).

Claims 1 and 7: Chen discloses a system and method for substituting

advertisements during a broadcast stream, comprising:

     a. Generating, digitizing, and storing a plurality of replacement

commercials (e.g. advertisements) for insertion into the broadcast stream (col 4, lines

39-41 and col 13, lines 15-20);

b.  Marking the broadcast with the start and end times (e.g. duration) of the commercial (col 2, lines 18-21; col 6, line 66 - col 7, line 10; and col 13, lines 15-20);

c.  Receive the broadcast stream (col 13, lines 57-62);

d.  Detect and read the insertion marker on the broadcast stream (col 6, lines 1-10 and col 12, lines 36-37);

e.  Select and substitute (insert) a replacement commercial into the broadcast stream at a point corresponding to the insertion marker (col 8, lines 1-5 and col 14, lines 3-12); and

f.  Repeat the detection and insertion of replacement commercials throughout the broadcast stream (col 13, line 61 - col 14, line 7).

While Chen uses a network television broadcast as an exemplary use of the invention, it is also disclosed that the invention can be applied "for splicing a secondary packetized data stream, such as a commercial, with a primary packetized data stream" (col 4, lines 7-9) and that the secondary packetized data streams (commercials) being inserted (spliced) "may include digital audio tapes" or "compact audio discs (CDS)" (col 4, lines 39-43) and that "audio only or data only messages may be inserted into the main packetized data stream" (col 4, lines 57-59). The Applicant's invention is directed to inserting a replacement commercial into a radio broadcast being received via the Internet. The Examiner notes that both radio and television broadcasts may be received via the Internet, and that both are "packetized data streams". Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the packetized data stream into which Chen is inserting commercials

could contain either audio/video data (i.e. television) or only audio data (i.e. radio). One would have been motivated to use Chen's system and method to insert commercials into a radio broadcast in view of his disclosure of inserting audio only data and storing digital audio tapes.

Chen discloses replacing main stream commercials with the selected commercials (col 14, lines 7-12) and also discloses marking and detecting the start and end times of the insertion points (T_in and T_out; col 13, lines 15-20). Additionally, Chen discloses that "the system should avoid any discontinuity which results in a non-compliant data stream. The data stream should also preclude problems such as syntax violations, decoding errors, buffer overflow or underflow, timing recovery problems due to discontinuous time stamps, audio/video synchronization problems, and video display artifacts" (col 1, line 65- col 2, line 3). While it is not explicitly disclosed that a comparison is made to determine whether the duration of the replacement commercial corresponds to the duration of the main stream commercial being replaced (based on the start and end times), it is implied that such a comparison is being made in order to "avoid discontinuity" and "buffer overflow or underflow" and to ensure that the beginning of the replacement commercial(s) is at T_in and the end of the replacement commercial(s) is at T_out (col 14, lines 3-7). Capek discloses a similar system and method for inserting commercials into data streams containing content information which also determines whether the duration of the insertion point is sufficiently long to allow insertion of a commercial (col 4, lines 43-51; col 5, lines 23-28; and col 9, lines 57-61). This implies that the duration of each stored replacement commercial is known and

used in the determination (comparison). <u>Wachob</u> also discloses a similar system and

method for providing targeted advertisements to users with a cable television broadcast

as an exemplary use of the invention. <u>Wachob</u> further explicitly discloses that the

targeted advertisement would replace the original advertisement in the broadcast and

be selected based on the determination of "the length of the impending commercial

message break" (col 7, lines 34-37) based on received tag information which "defines if

and when a commercial is about to occur, how long it will last" (col 7, lines 18-19).

Therefore, it would have been obvious to one having ordinary skill in the art at the time

the invention was made to compare the durations of the main stream commercial and

the replacement commercial when selecting the replacement commercial in the <u>Chen</u>

invention. One would have been motivated to compare these durations in order to

decrease the likelihood of "blank time" during the reception of the broadcast if the

replacement commercial was shorter than the main stream commercial or "overwriting"

of the main stream broadcast (content) if the replacement commercial was longer than

the main stream commercial.

While <u>Chen</u> does not explicitly disclose using consumer demographics and

preferences to select (target) the replacement commercial, <u>Capek</u> discloses that the

information "may be customized to either the user or the material requested, or both"

(col 4, lines 43-51 and col 8, lines 7-58) and that "the insertion manager 20 them selects

a customized insertion based upon the client profile for the requesting client" (col 12,

lines 32-39), or type of information requested (col 12, lines 34-39). <u>Wachob</u> also

discloses selecting the targeted advertisement "based on the viewer's demographic

characteristics" (col 2, lines 62-65). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to base the selection of the commercials in <u>Chen</u> upon how well it matches the consumer's demographic information and preferences. One would have been motivated to use this type of selection in <u>Chen</u> in order to present commercials which are more pertinent to the consumer ("to increase the users interest and to make the information more engaging", <u>Capek</u>, col 7, lines 8-10), thus increasing the acceptance and interaction with the commercial by the consumer.

Claim 2: <u>Chen</u>, <u>Capek</u>, and <u>Wachob</u> disclose a method and system for substituting advertisements during a broadcast stream as in Claim 1 above. <u>Chen</u> also discloses that the marking of the start and end times of the insertion point is performed by the broadcast station (col 6, line 66 - col 7, line 10 and col 13, lines 15-20).

Claim 3: <u>Chen</u>, <u>Capek</u>, and <u>Wachob</u> disclose a method and system for substituting advertisements during a broadcast stream as in Claim 2 above. Both <u>Chen</u> and <u>Capek</u> also disclose digitizing the audio stream into sequential packets to allow for presenting a series of packets in the proper order as one complete commercial (<u>Chen</u>, Fig. 6a, items A1-A11 and col 14, lines 56-65)(<u>Capek</u>, col 5, lines 14-16; col 7, lines 42-47; and col 8, line 59 - col 9, line 5).

Claims 4, 8, and 9: <u>Chen</u>, <u>Capek</u>, and <u>Wachob</u> disclose a method and system for substituting advertisements during a broadcast stream as in Claims 1, 2, 3, and 7 above. While <u>Chen</u> does not explicitly disclose using consumer demographics to select (target/match) the replacement commercial, <u>Capek</u> discloses that the information "may

be customized to either the user or the material requested, or both" (col 4, lines 43-51

and col 8, lines 7-58) and that "the insertion manager 20 them selects a customized

insertion based upon the client profile for the requesting client" (col 12, lines 32-39), or

type of information requested (col 12, lines 34-39). Wachob also discloses selecting the

targeted advertisement "based on the viewer's demographic characteristics" (col 2, lines

62-65). Therefore, it would have been obvious to one having ordinary skill in the art at

the time the invention was made to base the selection of the commercials in Chen upon

how well it matches the consumer's demographic information. One would have been

motivated to use this type of selection in Chen in order to present commercials which

are more pertinent to the consumer ("to increase the users interest and to make the

information more engaging", Capek, col 7, lines 8-10), thus increasing the acceptance

and interaction with the commercial by the consumer.

*(11)   Response to Argument*

*(A)  Independent claims 1-4 and 7-9 meet the conditions for patentability*
*because neither Chen et al, Capek et al, nor Wachob, alone or in combination,*
*teaches or suggests the interactive method for substituting replacement radio*
*commercials of claim 1 or the interactive system for substituting broadcast*
*commercial streams of claim 7.*

The Appellant argues that Chen "is directed solely to insertions made in a digital

video stream of the type used in a cable television system" (pages 6-7). The Examiner

notes that while Chen has used a cable television system as an exemplary embodiment

of his system, the invention as a whole is directed to inserting a secondary packetized

data stream (such as a commercial) into a primary packetized data stream (such as a

broadcast program). Chen further discloses that the secondary packetized data stream

may include digital audio tapes, compact audio discs, etc. (col 4, lines 39-44). As noted

in the final rejection, both television and radio broadcasts are packetized data streams

with the only difference is the amount of data (i.e. amount of bandwidth being used)

being transmitted through the network. The same steps for inserting (or replacing)

content into the data stream have been used in both the radio and television industries

for several decades by local stations to insert local advertising into nationally broadcast

programs. Furthermore, if one looks at the claims in Chen, it will be noted that nowhere

is the type of packetized data stream claimed to be only a video (television) data

stream. What is claimed is "a method for splicing a secondary packetized data stream

with a primary packetized data stream" (Claim 1 preamble). Therefore, the Examiner

believes Chen renders it obvious that the claimed method could be used for any type of

packetized data streams, to include both radio and television broadcasts.

The Appellant also argues that Chen does not disclose that the packetized data

stream is delivered over the Internet (i.e. as an Internet Radio broadcast) and has no

disclosure of "any reference whatsoever to any computer network" (pages 7-8). The

Examiner notes many cable television systems (including the Examiner's) also offer

Internet connections via the customer's cable television lines, thus becoming "Internet

hosting services". Since Chen shows that the Video Information Providers (VIP)(i.e.

cable television system) includes an Internet gateway 106 (see Figure 1) as the

Appellant pointed out in his previous response, it is obvious that the Video Information

User (VIU)(i.e. customer) could connect to and receive information, such as radio or

television broadcasts, from the Internet through <u>Chen</u>'s exemplary cable television

system. This is made even more explicit by <u>Chen</u>'s disclosure that the packetized data

stream is ultimately delivered through the cable television network and displayed to the

VIU "via televisions 170, 172 and/or personal computer 174" (col 5, lines 15-17). The

Examiner also notes that, although argued by the Appellant (pages 10-11), there does

not seem to be any bi-directional communication in the claimed invention other than the

presumption that the customer has requested to view or listen to the desired program

either by tuning to the proper channel or by connecting to the proper site online, which

is also presumed to be the case in the cited references. Furthermore, as disclosed in

<u>Wachob</u>, "Return paths for providing two-way communication between cable television

headends and subscriber converters are well known in the art" (col 10, lines 40-42), and

this was in 1989, over ten years before the Appellant filed the present application.

The Appellant continues the argument by noting that <u>Chen</u> requires "use of an

<u>elaborate infrastructure</u> requiring specialized, dedicated hardware" (page 8), such as

the "personal computer 174 may be connected to Digital Entertainment Terminal (DET)

decoder 168", which "decodes a packetized data stream received via a coax distribution

network", which is "fed by optical node unit 146", which supports conversion of

information it received optically into electrical information as well as accomplishing the

required modulation/demodulation". While this may sound complicated and require

specialized, dedicated hardware, much of it reads directly on an Internet connection

system. For example, in an Internet system, the consumer's personal computer is

usually connected to the Internet Service Provide through a modem (either internal or external to the actual personal computer). This modem "supports conversion of information it received into electrical (digital) information and accomplishes the required modulation/demodulation. Indeed, the word "modem" is derived by the concatenation of the first three letters of modulate with the first three letters of demodulate (i.e. mod + dem = modem). This modem is connected through a distribution network (using coaxial, optical, or other cables) to the Internet Service Provider which provides the actual connection to the Internet (and the broadcasting station) through its server computers. Thus, an Internet System also requires an elaborate (but very similar) structure of specialized, dedicated hardware (e.g. modem, distribution network, and Internet Service Provider server computer) in order to provide content, such as online radio/television broadcasts, to the consumer.

The Appellant argues in reference to the differences in the required data rates between network broadcast delivery and the Internet-based system that Chen's system requires many megabits a second to operate on a cable television system, whereas the Appellant's Internet-based system can deliver audio and video at the modest rates of typical dial-up modems (page 9). The Examiner first notes that these limitations are not found in the claimed invention. Second, the Examiner notes that as the Internet technology has progressed through the years, the online delivery rates have approached the delivery rates of network broadcast delivery. As noted above, the Examiner has connected to the Internet through his cable television system for several years, thus achieving a data delivery rate many times that of the old dial-up modems

discussed by the Appellant. As new technology emerges, such as the recent debut of

digital television lines, this data rate will even increase further and may equal or exceed

the data delivery rate of 155.52 Mb/s cited by the Appellant. Thus, the data delivery

rates has little effect on the claimed method steps or on the steps used by Chen.

The Appellant argues that the reference do not disclose determining the duration

of the commercial break by comparing the length of the broadcast commercials with the

lengths of the replacement commercials (pages 11-23). The Examiner notes that this

has been discussed at length in the rejection above. Chen discloses replacing the

packets in the main data stream with packets from the secondary data stream based on

the start and end times (T_in and T_out) received from (embedded in) the main stream,

and further discloses that in a series of replacement commercials "the beginning of the

first commercial will correspond to T_in, and the end of the last commercial will end at

T_out" (col 14, lines 3-7). This implies that the duration of the replacement commercial

is being compared to the duration of time between T_in and T_out. Without such a

comparison, Chen could not make the cited statement. Additionally, both Capek and

Wachob also disclose determining the duration of the commercial opportunities.

Wachob, in particular, explicitly discloses that the "tag information defines if and when a

commercial is about to occur, how long it will last" and "the length of the impending

commercial message break is determined from the tag information transmitted by the

headend" (col 7, lines 18-20 and 34-36). Thus, contrary to the Appellant's arguments,

all three references allude to matching the duration of the inserted advertisement to the

duration of the advertisement which is being replaced, i.e. the advertising opportunity.

Furthermore, as the Examiner has notes during the prosecution of this application, the

broadcast media (both television and radio) have been using embedded tags in the

broadcast data stream to indicate the start time and duration of commercial breaks in

nationally broadcast programs since at least the 1960's. These tags are used by the

local stations to insert local commercials or information (such as station identification)

into the broadcast data stream by replacing one or more data segments of the

broadcast (e.g. national commercials). In the claimed invention, the Internet hosting

service is the equivalent of the local radio station in that it receives the broadcast data

stream from the originating radio station and replaces the broadcast commercial with a

"local" commercial.

The Appellant also argues by citing the Federal Circuit that the "references must

be read as a whole and consideration must be given where the references diverge and

teach away from the claimed invention....Moreover appellants cannot pick and choose

among individual parts of assorted prior art references 'as a mosaic to recreate a

facsimile of the claimed invention" and argues that the Examiner has used hindsight in

order to reconstruct the invention (pages 18-22). The Examiner agrees that the whole

of each reference must be considered, but disagrees that all of the individual parts of

each reference must be compatibly combinable. Many times, even within a single

reference, numerous alterative embodiments are disclosed which contain individual

parts that are impossible or inane to combine with another embodiment's parts. For

example, a bill paying system could contain one embodiment where the payer submits

the payment via postal mail, another embodiment where the payer submits the payment

via the Internet, and another embodiment where the payer submits the payment through

automatic electronic funds transfer from his bank to the payee's bank. This clearly

shows that there are three alternative ways to submit the payment. However, it would

not make any sense whatsoever for the payer to submit a payment using all three of the

disclosed methods...one payment is sufficient. In the present application, the Examiner

has used three references which present various ways to replace and/or insert desired

commercials into a packetized data stream, either with or without demographic

targeting. It would have been obvious to one having ordinary skill in the art at the time

the invention was made to consider each of these references (and others) and to

choose the preferred features of each, depending on the desires and goals of the

system designer. Chen clearly shows determining *when* to insert the replacement

commercial, but is not as clear as to how to select *which* commercial to insert. Capek

and Wachob both disclose inserting commercials into a data stream, and also show

which commercial to select based on the amount of time available for insertion (i.e.

duration of commercial opportunity). While Capek may be using a different method to

determine *when* to insert the commercial, it is Capek's method of determining *which*

commercial to insert which is being combined with the Chen reference. Wachob, on the

other hand, also shows a similar method as Chen in determining *when* to insert the

commercial and also shows that the insertion determination (i.e. *which* commercial to

insert) is based on the duration of the commercial opportunity and the demographics of

the viewer (i.e. targeting the commercial). Thus, the three references are all attempting

to solve a known problem of inserting a commercial into a broadcast data stream. The

Examiner notes that Appellant's argument that bodily incorporating <u>Capek</u> into <u>Chen</u>

would render <u>Chen</u> inoperable because it would randomly insert commercials in the

middle of broadcast content (e.g. a song) would be valid if one completely replaced all

of the disclosure of <u>Chen</u> with <u>Capek</u>'s disclosure, but then one would have the <u>Capek</u>

patent, not the <u>Chen</u> patent.

Finally, the Appellant argues that the <u>Wachob</u> "system is <u>thus much more</u>

<u>cumbersome</u> than the applicant's method" and, thus, the "applicant's system <u>avoids</u> the

<u>needless complication and wasted bandwidth</u> inherent in any system wherein the

selection is effected only at the communication node immediately connected to the

user's television, computer, or similar device" (page 23). Again, the Appellant is not

arguing the claimed subject matter, but the reasons why a person may select one type

of delivery system over another. The Examiner notes that in the current invention the

selection is being made by the Internet host system, which is the disparaged

"communication node immediately connected to the user's television, computer, or

similar device". Thus, it is not inherent that such as system would have <u>needless</u>

<u>complication and wasted bandwidth</u> as asserted by the Appellant. If it was, then the

Applicant's system would avoid and have <u>needless complication and wasted bandwidth</u>

at the same time.

***(B) Claim 2 (dependent from claim 1) meets the conditions for patentability***

***because neither Chen et al, Capek et al, nor Wachob, either alone or in***

*combination, teaches or suggests the interactive method for substituting*

*replacement radio commercials of claim 2.*

The Appellant argues that since the references do not disclose all the features of

the parent claim (Claim 1), Claim 2 is allowable even though Chen discloses marking

the start and stop times by the broadcast station (page 24).  The Examiner notes the

above arguments in reference to the parent claim.  As the Appellant has indicated,

Chen does disclose that the broadcasting station marks the start and stop times of the

commercial as in Claim 2.


*(C) Claim 3 (dependent from claims 1 and 2) meets the conditions for*

*patentability because neither Chen et al, Capek et al, nor Wachob, either along or*

*in combination, teaches or suggests the interactive methods for substituting*

*replacement radio commercials of claim 3.*

The Appellant argues that Chen discloses high speed transmission of

compressed MPEG video data, whereas the applicant's claim 3 requires the presence

of an uncompressed low Internet speed audio stream (page 25).  Again, the Appellant is

arguing features not present in the claims.  As discussed above, Chen discloses that

the broadcast stream can be received by the user's cable television set or by the user's

personal computer (col 5, lines 15-17). Also noted above, cable television service

providers also provide high speed (broadband) Internet connections to their subscribers

and are, thus, Internet Service Providers (Internet hosting services, in the Appellant's

terminology).  Furthermore, whether the customer is using a low speed dial-up Internet

connection or a high-speed Internet connection, such as through a cable modem or

dedicated service link (DSL) telephone line, has no bearing on the steps of the claimed

method. Indeed, the Examiner has personally found that using a low-speed connection

usually results in very poor performance when connecting to an Internet Radio Service.

I was common for me to experience 5-10 second blackouts in programming while the

broadcast stream was spooled into my computer's buffers, then receive 20-30 seconds

of audio, then another blackout, etc. The reference's use of high-speed connections is

a much-needed and obvious improvement over the old slow-speed dial-up connections.

As for the claimed packets bearing sequential serial numbers, the Examiner notes that

this is well known in packet switching networks such as the Internet (see **packet** and

**packet switching** on page 348 of the Microsoft Press Computer Dictionary, Third

Edition). The dictionary defines **packet** as "2. *In packet-switching networks, a*

*transmission unit of fixed maximum size that consists of binary digits representing both*

*data and a header containing <u>an identification number</u>, source and destination*

*addresses, and sometimes error-control data*" (emphasis added) and further defines

**packet switching** as "*A message-delivery technique in which small units of information*

*(packets) are relayed through stations in a computer network along the best route*

*available between the source and the destination. A packet-switching network handles*

*information in small units, breaking long messages into multiple packets before routing.*

*Although each packet may travel along a different path, and the packets composing a*

*message may arrive at different times or <u>out of sequence</u>, the receiving computer*

*reassembles the original message correctly. Packet-switching networks are considered*

*to be fast and efficient. To manage the tasks of routing traffic and*

*assembling/disassembling packets, such a network requires some "intelligence" from*

*the computers and software that control delivery. The Internet is an example of a*

*packet-switching network. Standards for packet switching on networks are documented*

*in the CCITT recommendation X.25"* (emphasis added).

**(D) Claim 4 (dependent from claim 1) and claims 8 and 9 (dependent from**

**claim 7) meet the conditions for patentability because neither Chen et al, Capek et**

**al, nor Wachob, either alone or in combination, teaches or suggests the**

**interactive method for substituting replacement radio commercials of claim 4 or**

**the interactive system for substituting broadcast commercial streams of an**

**Internet radio program stream of claims 8 and 9.**

The Appellant argues "that the inherently unidirectional nature of the Chen et al

method and system inherently preclude the use of individualized customer

demographics in the selection" (page 27). The Examiner notes that Chen's disclosure

of an Internet gateway (Figure 1, item 106) and of delivering the first packetized data

stream with the inserted secondary packetized data stream to the user's personal

computer (Figure 1, item 174) explicitly encompasses bi-directional communications.

As discussed above, the Examiner also notes that, although argued by the Appellant

(pages 10-11), there does not seem to be any bi-directional communication in the

claimed invention other than the presumption that the customer has requested to view

or listen to the desired program either by tuning to the proper channel or by connecting

to the proper site online, which is also presumed to be the case in the cited references.

Furthermore, as disclosed in <u>Wachob</u>, "Return paths for providing two-way communication between cable television headends and subscriber converters are well known in the art" (col 10, lines 40-42), and this was in 1989, over ten years before the Appellant filed the present application, thus <u>Chen</u>'s example of using his invention on a cable television network also renders it obvious to have a bi-directional communications either through the exemplary cable television system or the person computer of the user. The Appellant's argument that the <u>Wachob</u> disclosure "of selecting advertising based on the viewer's demographics" using "a <u>brute-force approach</u>" (page 28) is once again arguing features not present in the claims. Claim 4 add to its parent claim the limitation of *"wherein the Internet hosting service maintains commercial type information for targeting ads to consumers, and user demographic information, and matches said user demographics and personal preferences to said commercial type for selecting a commercial targeted to said user"*. Claims 8 and 9 add similar limitations using system terminology. Thus, the claims include two limitations: that the demographic of the consumer and the targeting criteria of the commercial are known (stored) and that a comparison between the two are made to select a commercial targeted to the user. First, this is the definition of targeted advertising. Second, as the Appellant noted, <u>Wachob</u> is "selecting advertising based on the viewer's demographics" and <u>Capek</u> "suggests insertions that may be customized to a user". Thus, both references imply that the system maintains the consumer's demographics and the targeting criteria of the commercials. Without maintaining (storing) both sets of data, it would be impossible to
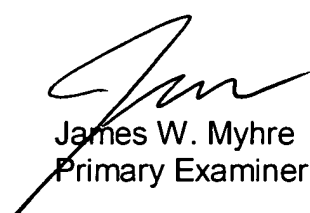
select advertising based on the viewer's demographics (<u>Wachob</u>) or to customize

insertions to a user (<u>Capek</u>).


For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,


JWM
October 20, 2004

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